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DIKE, BRONSTEIN, ROBERTS & CUSHMAN
Intellectual Property Practice Group

MARLBOROUGH, MA OFFICE
TELEPHONE (508) 485-7772

WASHINGTON, DC
TELEPHONE (703) 553-2563

MAILING ADDRESS:
P.O. BOX 9169
BOSTON, MA 02209

101 FEDERAL STREET
BOSTON, MA 02110
(617) 439-4444
FAX (617) 439-4170

FACSIMILE COVER SHEET

To: The Assistant Commissioner For Patents
Washington, DC 20231

ATTENTION: Urszula M. Cegielnik
GROUP: 3712
FAX NO.: 1-703-872-9309
FROM: George W. Neuner

TOTAL NUMBER OF PAGES: 13 , INCLUDING COVER SHEET

Should there be any problems with the transmission of the following document(s), please contact Denise Rose at telephone number (617) 439-4444.

RE: INVENTOR: LYMAN
SERIAL NO.: 09/417.428

faxfooter

Practitioner's Docket No. 71923.48641 ***PATENT***

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	LYMAN		
Application No.:	09/417,428	Group No.:	3712
Filed:	October 13, 1999	Examiner:	U. CEGIELNIK
For:	ENTERTAINMENT AND STRESS RELIEF DISK		

Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. SECTION 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

[ ] deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

FACSIMILE

[X] transmitted by facsimile to the Patent and Trademark Office **(703) 872 - 9302.**

Date: November 7, 2002

Signature
Denise A. Rose
Denise A. Rose
(type or print name of person certifying)

TRANSMITTAL OF REQUEST FOR RECONSIDERATION

1. Transmitted herewith is a Request for Reconsideration for this application.

STATUS

2. Applicant is
   [X] a small entity. A statement:
      [ ] is attached.
      [X] was already filed.
   [ ] other than a small entity.

EXTENSION OF TERM

NOTE: *"Extension of Time in Patent Cases (Supplement Amendments) -- If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.*

If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).

NOTE: *See 37 C.F.R. Section 1.645 for extensions of time in interference proceedings, and 37 C.F.R. Section 1.550(c) for extensions of time in reexamination proceedings.*

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. Section 1.136 apply.

(complete (a) or (b), as applicable)

(a) [ ] Applicant petitions for an extension of time under 37 C.F.R. Section 1.136 (fees: 37 C.F.R. Section 1.17(a)(1)-(4)) for the total number of months checked below:

	Extension (months)	Fee for other than small entity	Fee for small entity
[ ]	one month	$ 110.00	$ 55.00
[ ]	two months	$ 400.00	$ 200.00
[ ]	three months	$ 920.00	$460.00
[ ]	four months	$ 1,440.00	$ 720.00

Fee: $ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

[ ] An extension for ___ months has already been secured. The fee paid therefor of $ _____ is deducted from the total fee due for the total months of extension now requested.

OR

(b) [X] Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. Section 1.16(b)-(d)) has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3) SMALL ENTITY				OTHER THAN A SMALL ENTITY	
	Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Rate	Addit. Fee	*OR*	Rate	Addit. Fee
Total	Minus		=	x $9 =	$		x $18 =	$0
Indep.	Minus		=	x $42 =	$		x $84 =	$0
[ ] First Presentation of Multiple Dependent Claim				+ $140 =	$		+ $280 =	$
				Total Addit. Fee	$___	*OR*	Total Addit. Fee	$0

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3,

** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

WARNING: *"After final rejection or action (Section 1.113) amendments may be made canceling claims or complying with any requirement of form which has been made." 37 C.F.R. Section 1.116(a) (emphasis added).*

(complete (c) or (d), as applicable)

(c) [X] No additional fee for claims is required.

OR

(d) [ ] Total additional fee for claims required $ _____.

FEE PAYMENT

5. [ ] Attached is a check in the sum of $ _____.
[ ] Charge Account No. _____ the sum of $ _____.
A duplicate of this transmittal is attached.

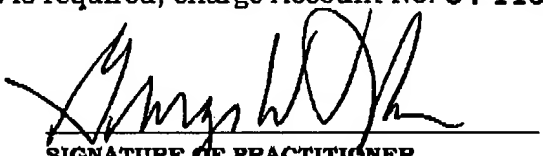
FEE DEFICIENCY

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).

6. [X] If any additional extension and/or fee is required, charge Account No. **04-1105**.

AND/OR

[X] If any additional fee for claims is required, charge Account No. **04-1105**.



SIGNATURE OF PRACTITIONER
George W. Neuner (Reg. No. 26,964)
Dike, Bronstein, Roberts & Cushman
Intellectual Property Practice Group
EDWARDS & ANGELL, LLP
P.O. Box 9169
Boston, Massachusetts 02209
Tel. No. (617) 439-4444

BOS2_318250.1

#24 Req. for Rec. 11/13/02

Attorney Docket No. 48,641 (71923)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	D.F. Lyman	
U.S.S.N.:	09/417,428	GROUP: 3712
FILED:	October 13,1999	EXAMINER: U. Cegielnik
FOR:	ENTERTAINMENT AND STRESS RELIEF DISK	

Commissioner for Patents
Washington, D.C. 20231

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted on the date shown below to the: Commissioner for Patents, Washington, D.C. 20231

FAX 703-872-9302
Att: Examiner U. Cegielnik
Art Unit 3712

Date: 11.07.02 By: Denise Rose
Denise Rose

****

Sir:

REQUEST FOR RECONSIDERATION

In the Office Action dated August 13, 2002, claims 1-17 are pending and all claims are rejected. Applicant requests reconsideration for at least the reasons discussed herein.

The present invention is directed to and claims an amusement and stress relief device formed of a flexible, resilient polymeric material having a center portion with a concave/convex shape, wherein the device has **two stable equilibrium positions** wherein a first equilibrium position comprises a first surface having a concave shape and a second surface having a convex shape and a second equilibrium position is the reverse or inverse of the first equilibrium position and comprises the second surface having a concave shape and the first surface having a convex shape, whereby manual manipulation of the device inverts the first and second surfaces between the two stable equilibrium positions, as set forth in claim 1. In other words, the second stable equilibrium position is the reverse or inverse of the first stable equilibrium position. The device of the present invention **requires** manual manipulation to be moved from one stable equilibrium position to the other, no matter which stable equilibrium position it is in. Further, **the two equilibrium positions have substantially the same shape or appearance.**

The nature of the present invention can be readily seen by examining the samples of the device that were previously submitted.

Claims 1-17 are rejected under 35 U.S.C. §103(a) over Davis in view of Gentile et al. (newly applied). Davis describes a jumping toy consisting of a hemispherical body made of fairly stiff and hard rubber. Thus, Davis ***fails*** to teach or suggest a device having a center portion and **a substantially planar peripheral portion** surrounding the center portion, as claimed herein.

Further, Davis states (col. 1, lines 6-12) that"

> [t]o operate the toy one simply turns it inside out and places it rim down on a flat surface. The toy will shortly start to return, at first slowly and then with increasing rapidity, to its undeformed shape. At a critical midway point the toy suddenly and completely snaps back into shape.

Thus, contrary to the present invention, the jumping toy of Davis **automatically** returns to its undeformed shape. The deformed shape is not a **stable equilibrium** position but always has movement to return to the undeformed shape, even though the movement is slowly (and perhaps barely perceptively) at first. No external force is required to return the deformed device of Davis to its original shape. It does not have a second stable equilibrium position.

Indeed, to accomplish the purpose of the jumping toy, Davis states "my toy is a more or less hemispherical body consisting of a wall of fairly stiff and hard **rubber**." That is important because, when the top surface is inverted, the elasticity of the rubber is required to restore the toy to its original shape. However, such elasticity is not desirable in the present invention. Instead, the device of the present invention is sufficiently resilient to deform without breaking and to invert its original stable equilibrium position to adopt a second stable. equilibrium position, when outside forces are applied. However, unlike the jumping toy of Davis, outward forces are again necessary for the present device to reinvert to the first stable equilibrium position.

Thus, Davis also ***fails*** to teach or suggest a device wherein **two equilibrium positions have substantially the same shape or appearance**. First, Davis **fails** to teach a device that has two stable equilibrium positions. In addition, the second position shown in Fig. 5 cannot seriously be considered to have **substantially the same shape or appearance** as Fig. 4.

It is not seen how the present invention would have been made by one of ordinary skill in the art in view of Davis. Davis fails to teach or suggest a plastic device that will indefinitely hold either of two stable equilibrium positions that are structurally mirror images of each other.

The copy of Davis attached to the Office Action with notations thereon appears to propose that Fig. 5. is a second stable position for the device of Fig. 4. However, one only has to compare Fig. 4 and Fig. 5 to see that the two positions **fail** to have have **substantially the same shape or appearance**, even if they were both stable equilibrium positions, which they are **not**.

Gentile does describe a device that can be manipulated between two stable equilibrium positions. The Gentile device has a flexible shell for launching projectiles. Comparing FIG. 1b with FIG. 2 shows that the two positions of the Gentile device **fail** to have have **substantially the same shape or appearance**.

Further, there is no basis for combining the teachings of Davis and Gentile. Davis describes a jumping toy, which relies on the fact that the deformed position automatically returns to the original shape. If it were a stable equilibrium position, there would be no jumping and the purpose of Davis would be defeated.

Samples of the device of the present invention were submitted previously to aid the examiner. As can be seen, there is no difference between the sample device in the first or the second equilibrium position. That is not true either for the device of Davis or the device of Gentile.

Thus, the present device has substantially different structure from that of davis or Gentile. It is not seen how the present invention would have been obvious to one of ordinary skill in the art from any combination the teachings of Davis and Gentile.

Claims 2-17 are patentable over Kubiatowicz for at least the reasons discussed above with respect to claim 1.

With respect the particular dimensions set forth in claims 2-8, the polymeric material as set forth in claims 9 and 16, the surfaces having a texture as set forth in claims 10-13, and the scent being added as set forth in claim 14, the cited references make no suggesti0ons whatsoever.

In addition, the cited references ***fail*** to teach or suggest a device that is disk-shaped and has a diameter d in the range of about 0.75 inch to about 6 inches, as set forth in claim 2.

The cited references ***fail*** to teach or suggest a device having a peripheral portion comprising a lip having a width w wherein the ratio of w to d is not greater than about ¼, as set forth in claim 3.

The cited references ***fail*** to teach or suggest a device wherein the ratio of w to d is in the range of about 1/30 to about 1/5, as set forth in claim 4.

The cited references ***fail*** to teach or suggest a device wherein the ratio of t to d is in the range of about 1/80 to about 1/20, as set forth in claim 6.

The cited references ***fail*** to teach or suggest a device wherein the thickness t of the center portion is tapered, such that a thickness t_l near the peripheral portion is greater than a thickness t_c near the center, as set forth in claim 7.

The cited references ***fail*** to teach or suggest a device wherein a domed peak is formed in the center portion the peak having a height h_p relative to a plane containing the peripheral portion, and the ratio of h_p to d is not greater than about 1/3, as set forth in claim 8.

The cited references ***fail*** also to teach or suggest a device (1) wherein at least one of the first and second surfaces are textured; (2) wherein the texture is provided by ridges formed on the surface; (3) wherein the texture is provided by dimples formed on the surface; (4) wherein at least one surface comprises an illustration; (5) wherein the material comprises a scent that is emitted from the device upon manual manipulation; or (6) wherein the material comprises a composition that changes the color of the device upon changes in temperature or changes in other environmental conditions. the assertion that these claimed recitations are merely design choices is not supported. Nowhere is there any suggestion that the device of Bullard or Davis should be so constructed.

Because the structure and function of the Davis and Gentile devices are so different, it is not seen how it would have been obvious to one of ordinary skill in the art to use the claimed dimensions and materials for Applicant's stress relief disc, which has a totally different structure and function.

For example, in the embodiment set forth in claim 8, the device has a domed peak formed in the center portion, the peak having a height h_p relative to a plane containing the peripheral portion, and the ratio of h_p to d is **not greater than** about 1/3. It is not seen how this claimed device would have been obvious from Davis and/or Gentile.

Regarding the textured surface as set forth in claims 10-13 or the scent added to the material as set forth in claim 14, there is no suggestion in Davis and/or Gentile for any reason to use a textured surface or a scent for the popper toy. Again, it is not seen how it would have been obvious to one of ordinary skill in the art to use a textured surface on or apply a scent to the Davis or Gentile devices.

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of Davis and Gentile, or any other prior art of record, whether each taken alone or in any combination.

In view of the discussion above, it is respectfully submitted that the present application is in condition for allowance. An early reconsideration and notice of allowance are earnestly solicited.

Respectfully submitted,

Date: 6 Nov '02

George W. Neuner (Reg. No. 26,964)

Dike, Bronstein, Roberts & Cushman
Intellectual Property Practice Group
EDWARDS & ANGELL, LLP
P.O. Box 9169
Boston, MA 02209
(617) 439-4444